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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,514	11/24/2003	Kenneth Gordon Walker	W245 0004	1974
720 7590 04/30/2007 OYEN, WIGGS, GREEN & MUTALA LLP 480 - THE STATION 601 WEST CORDOVA STREET VANCOUVER, BC V6B 1G1 CANADA			EXAMINER BOGART, MICHAEL G	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,514

Applicant(s)

WALKER, KENNETH GORDON

Examiner

Michael G. Bogart

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hallsworth *et al.* (US 4,246,676; hereinafter “Hallsworth”) in view of Smallwood (US 3,736,950).

Hallsworth teaches a check valve (48) for a canister (12) capable of receiving fluids, said canister (12) having a vacuum port (40) capable of applying vacuum to said canister (12) for inducing a flow of fluids into said canister (12), said check valve (48) being operably coupled to said vacuum port (40) for stopping said application of vacuum to said canister (12) when said fluids in said canister (12) reach a pre-determined upper level, said check valve (48) comprising:

(a) a floatball (54);

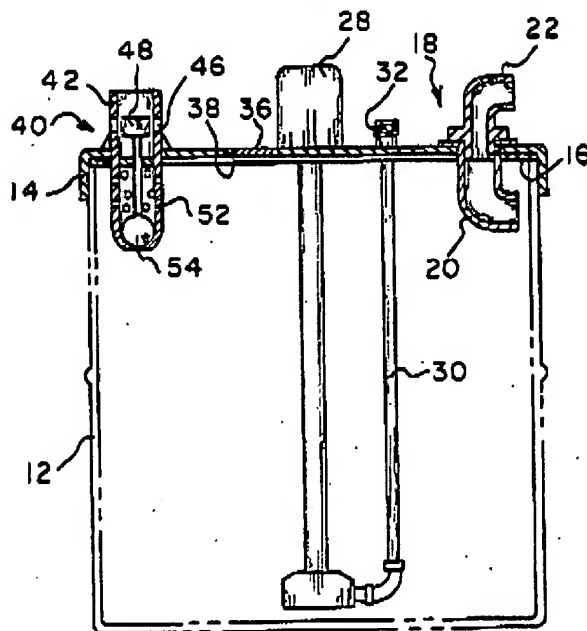
(b) a cage (50, 52) for housing said floatball (54);

(c) a needle valve (56, 48);

(d) a needle valve guide (62) for slidably retaining said needle valve (56, 48), said floatball (54) being positioned below said needle valve (56, 48) to engage said needle valve (56, 48) and lift said needle valve (56, 48) upwardly to effectively stop the vacuum

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applied to the vacuum port (40) when said fluids reach said upper level (col. 3, lines 22-64)(see figure 2, *infra*).

Fig. 2

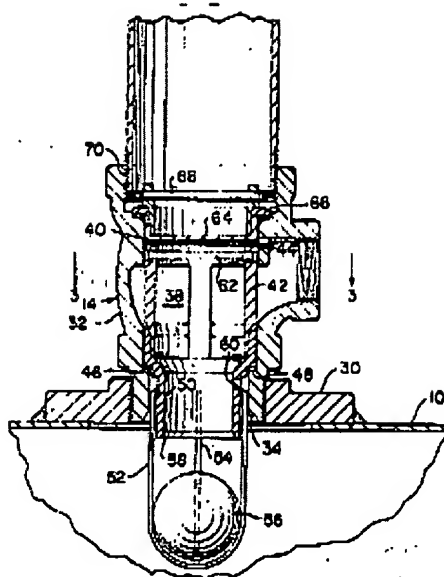
Regarding the functional limitations of the claims, apparatus claims must be structurally distinguishable from the prior art. MPEP § 2114.

Hallsworth does not teach that the cage comprises a plurality of spaced-apart members.

Smallwood teaches a floatball (56) disposed within a cage comprising a plurality of spaced-apart members (52, 54)(see figure 2, *infra*).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the floatball cage construction of Smallwood as the cage in Hallsworth in order to provide a cage that is known in the art to be suitable for that purpose.

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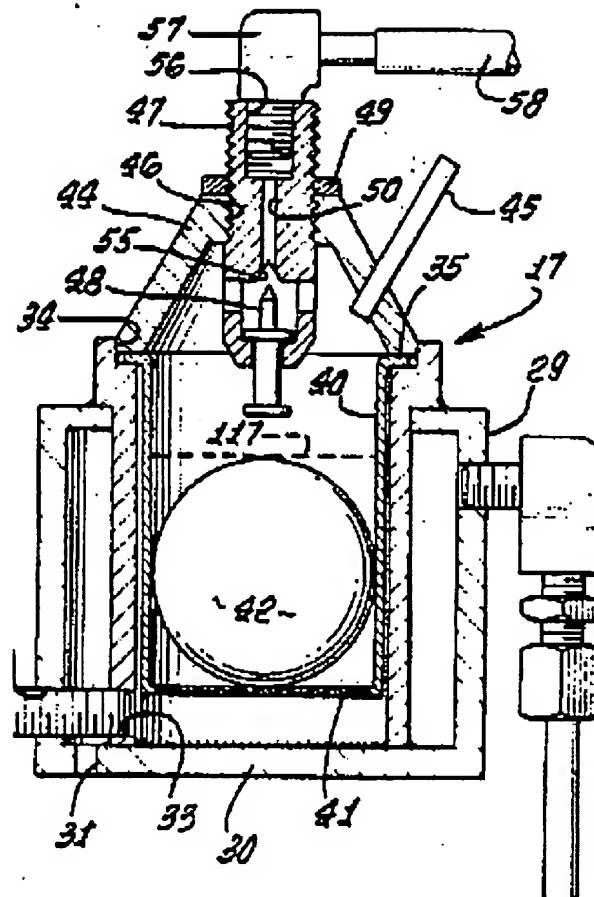
Regarding claim 4, Hallsworth teaches a device (12) that is capable of receiving bodily fluids.

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Hallsworth and Smallwood as applied to claims 3 and 4 above, and further in view of Collins (US 4,139,582).

Hallsworth and Smallwood do not teach a needle valve that is detached from the floatball.

Collins teaches a floatball (42) and needle valve (48) that are detached when the valve is open (see figure 4, *infra*). Using separated needle and floatball structures allows them to be manufactured separately and cleaned, replaced or repaired independently of one another.

Making what is known in the art to be integral, separable, is not sufficient to patentably distinguish an invention over the prior art if it is desirable for any reason to make that structure separable. MPEP § 2144.04.



Response to Arguments

Applicant's arguments with respect to claims 3-5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
26 April 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

